

Nos. 04-19-00192-CR & 04-19-00193-CR

JOHNNY JOE AVALOS,
Appellant

v.

THE STATE OF TEXAS,
Appellee

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§

IN THE FOURTH DISTRICT
FILED IN
4th COURT OF APPEALS
SAN ANTONIO, TEXAS
09/30/20 3:25:28 PM
MICHAEL A. CRUZ
Clerk
COURT OF APPEALS
SAN ANTONIO, TEXAS

STATE'S MOTION TO SUSPEND OR EXTEND THE WORD LIMIT

TO THE HONORABLE JUSTICES OF THE COURT OF APPEALS:

NOW COMES Joe D. Gonzales, Criminal District Attorney of Bexar County, Texas, and Andrew Warthen, counsels for the State of Texas, and files this motion to suspend or extend the word limit for filing its response to appellant's en banc motion for reconsideration.

I.

This case is on appeal from the 437th District Court of Bexar County, Texas. The style is *The State of Texas v. Johnny Joe Avalos*, and the trial-court cause numbers are 2018-CR-7068 and 2016-CR-10374, respectively.

On June 3, 2020, this Court affirmed appellant's sentence of life without parole. On August 10, 2020, appellant filed a motion for en banc reconsideration. On September 22, 2020, this Court ordered the State to file a response to appellant's motion. That response is due by October 10, 2020.

II.

Under Texas Rule of Appellate Procedure 9.4(i)(2)(D), the maximum length for “a motion for rehearing and response in an appellate court” is 4,500 words. Since this case is a being considered for en banc reconsideration—that is, by four additional justices who have never considered the arguments of counsel in this case—the State desires to give as robust an argument as possible to the full Court as to why en banc reconsideration is inappropriate. While working on his brief, undersigned counsel realized that, to do so, he may need to exceed the 4,500-word limit.

Counsel, of course, will endeavor to keep the word count as low as possible, and will edit his response as much as possible to stay under the limit. Counsel does not anticipate exceeding the limit by an excessive amount. But it may be necessary to exceed that limit to provide the Court with as robust a defense of the judgement as possible.

As a result, the State requests that this Court either suspend the word limit entirely, or grant the State permission to exceed it up to a certain amount, for example, 7,500 words, which is the amount provided for reply briefs in appellate courts. Tex. R. App. P. 9.4(i)(2)(C).

III.

Counsel for the State prays that this Court grants this motion and either suspends the word limit or allows counsel to exceed it.

Respectfully submitted,

JOE D. GONZALES
Criminal District Attorney
Bexar County, Texas

/s/Andrew N. Warthen
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CERTIFICATE OF SERVICE

I, Andrew N. Warthen, hereby certify that a true and correct copy of this motion was emailed to appellant Johnny Joe Avalos's attorney, Jorge G. Aristotelidis, at jgaristo67@gmail.com, on this the 30th day of September, 2020.

/s/Andrew N. Warthen
ANDREW N. WARTHEN

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Associated Case Party: JohnnyJoeAvalos

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Jorge Aristotelidis		jgaristo67@gmail.com	9/30/2020 3:25:28 PM	SENT

Associated Case Party: Bexar County District Attorney's Office

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Shameka Roberts		shameka.roberts@bexar.org	9/30/2020 3:25:28 PM	SENT
Andrew Warthen		awarthen@bexar.org	9/30/2020 3:25:28 PM	SENT